



**In re Estate of John Warui Mathenge (Deceased) (Succession Cause E52 of 2022) [2024] KEHC 10521 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E52 OF 2022  
SM MOHOCHI, J  
AUGUST 8, 2024**

**BETWEEN**

**REBECCA WAMBUI RUKEYSER ..... APPLICANT**

**AND**

**AYUB THUMBI WARUI ..... 1<sup>ST</sup> RESPONDENT**

**SUSAN NYAMBURA WARUI ..... 2<sup>ND</sup> RESPONDENT**

**ERIC NDUNG'U WARUI ..... 3<sup>RD</sup> RESPONDENT**

**DANIEL MATHENGE WARUI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The Deceased the late John Warui Mathenge died intestate at the Nakuru War Memorial on the on the 26<sup>th</sup> July 2021 leaving behind two surviving spouses Susan Nyambura Warui and Ruth Waruguru and the following fifteen grown up children including the Applicant:
  - i. Rose Wanjiku Rukeyser.
  - ii. Edward Kamau Warui
  - iii. Daniel Mathenge Warui
  - iv. Ayub Thumbi Warui
  - v. Rebecca Wambui Warui
  - vi. Elizabeth Wangare Warui
  - vii. Joshua Ndiritu Warui
  - viii. Miriam Wanjiku Warui



- ix. Martha Muthoni Warui
  - x. Priscilla Wanjiru Warui
  - xi. Rachel Wanjiku Warui
  - xii. Rose Wanjiru Warui
  - xiii. Nicholas Mathenge Warui
  - xiv. Caroline Wanjiku Warui
  - xv. Erick Ndung'u Warui
2. The Family of the deceased had a meeting on the 11<sup>th</sup> August, 2021 and appointed/nominated Rebecca Wambui and Susan Nyambura as representatives of the two houses to undertake the succession.
  3. On the 19<sup>th</sup> of May 2022 the citor Susan Nyambura moved Court against Ruth Waruguru. And on the 20<sup>th</sup> May 2022, she moved Court for preservatory orders in a miscellaneous Application
  4. That, the said Ruth Waruguruhas refused and/or is unable to perform her obligations in taking out letters of administration of the estate of the deceased.
  5. That, she filed the citation on her own behalf to institute a succession cause before Court.
  6. That, the said Ruth Waruguruhas not responded to her request to take out the letters of administration necessitating this citation.
  7. That, she had tried in vain to convince the said Ruth Waruguru to begin the process of petitioning for letters of administration.
  8. That, the above are survivors of the deceased and are desirous of obtaining grant of letters of administration of the deceased estate and that the said Ruth Warugurucontinues to intermeddle with the estate to the detriment of other beneficiaries.
  9. By a Response dated 6<sup>th</sup> June 2022, Rebecca Wambui Warui swore an affidavit under the authority of the Citee-Ruth Waruguru,her mother and the 1<sup>st</sup> wife of the deceased.
  10. She deponed that, upon demise of their dad the following survived him; Ruth Waruguru, Daniel Mathenge Warui, Ayub Thumbi Warui, Rebecca Wambui Mathenge, Elizabeth Wangari Warui, Joshua Ndiritu Warui. Miriam Wanjiku Warui, Martha Muthoni Warui, Priscilla Wanjiru Warui, Rachael Wanjiru Warui, Susan Nyambura Warui, Edward Kamau Warui, Rose Wanjiru Warui, Nicholas Mathenge Warui, Joshua Ndiritu Warui, Erick Warui and Caroline Wanjiku Warui surviving.
  11. That, after the death of their father the entire family had a meeting on the 11<sup>th</sup> August, 2021 and appointed/nominated her together with the citor herein Susan Nyambura to petition for Letters of administration of the deceased estate attached exhibiting a copy of the Chief letter dated 18<sup>th</sup> August, 2021 marked as RWW 2.
  12. That, it was also agreed in that meeting as a family to mourn their father for at least 6 months and thereafter they start the succession in respect of the deceased estate.
  13. That, as mandated she has initiated the process of compiling assets of the deceased estate which are spread across the county by engaging a private investigator who has so far came up with the exhibited list marked as RWW 3, a move that is well within the knowledge of the Citor.



14. That, the brief case containing some allotment letters and other vital documents are in possession of the Citor herein and she is yet to bring them forth for the purpose of this process.
15. That, all the dependents have had access to the deceased office and to all his files and therefore none of them is intermeddling with the estate.
16. That none of them and in particular the Citee Ruth Waruguru, has refused and of delayed in any way to take letters of administration as above the private investigator is left to complete compiling the list of assets.
17. That, with respect to the mail box the Citor has never asked for keys to the mail box and these are just fabricated allegations with ulterior motive to waste the decease estate to disadvantage of other dependents.
18. That with the apartment in Lake View, Nakuru her step brother Eric Warui is still in occupation of one unit and others were locked as there are inhabitable and which they intent to renovate as previously agreed by the family.
19. That, the present Citation has been brought in bad faith and should be dismissed with costs.
20. That, together with this affidavit, she provided her written statement exhibited as RWW 4 and that, the Citor is not sincere and ought to do her part.
21. A consent was entered into in the miscellaneous application on the 13<sup>th</sup> October 2022, to assure the two surviving spouses some monthly stipend, adopted on the 19<sup>th</sup> September 2023.
22. In the Meantime, Rebecca moved Court against Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui, seeking that they be cited for contempt for failure to abide by the consent order dated 13<sup>th</sup> October 2022.
23. That pending the hearing and final determination of the Application herein the Honourable Court be pleased to issue an order restraining the Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui, their agents, servants and or employees from withdrawing any funds from the Account No. xxxxxxxxxx domiciled at Co-operative Bank of Kenya.
24. That, Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui, be ordered to account for all funds and or proceeds they have withdrawn from the Bank Account No. xxxxxxxxxx and how they were utilized, spent and or preserved.
25. That, Susan Nyambura, and Ayub Warui, be ordered to account for all funds and/or proceeds he has received from the sale of the Deceased mechanical equipment and leasing out the deceased's properties to the third parties and how they were utilized, spent and/or preserved.
26. That, the Court be pleased to order for a forensic audit of the Deceased's estate since his demise to be conducted by a reputable audit firm to be agreed upon by all the beneficiaries herein failing which the Court to appoint one.
27. That Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui be ordered to refund all and any of the proceeds they have withdrawn from the Deceased's accounts and or misappropriated from the entire estate.
28. That, the Chief's and Deputy County Commissioner's letter dated on the 18<sup>th</sup> day August, 2021 be adopted as this Honourable Court order and issue the simple Grant Letter of Administration to the mentioned persons.



29. That, Court be pleased to issue Grant ad colligenda bona to the Rebecca Wambui Rukeyser and Susan Nyambura, for preservation of the deceased's Estate.
30. That costs of this Application be entirely borne by Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui.
31. The Application was supported by the affidavit of Rebecca Wambui Rukeyser, that through the consent dated 13<sup>th</sup> day of October 2022 and filed to Court on the same day, provided that a sum of Kenya Shilling Forty Thousand (Kshs.40, 000/=) was to be withdrawn for the monthly upkeep of the deceased spouses,
32. That, Consent also provide that another Kenya Shilling 25,000/= shall be withdrawn for medical purposes upon presentation of the medical receipts.
33. That the signatories of the Account No.01109949956000 at Co-operative bank have been withdrawing the said amount and the Ayub Warui has been spending the said amount for his personal use. That Ruth Waruguru Warui, the spouse of the deceased has been suffering from dementia and has been living with one of the beneficiaries namely Elizabeth Wangari who has been taking care of her.
34. That for the past two months Ruth Waruguru Warui, has been living with Miriam Wanjiku Warui, who has not been receiving the upkeep money from Ayub Warui despite withdrawing the money.
35. That Ruth Waruguru Warui has never received any funds for the upkeep, despite the signatories withdrawing the money every month.
36. Rebecca Wambui Rukeyser has been catering for the upkeep and medical expenses of Ruth Waruguru Warui and also been catering for expenses incurred by the Estate of the deceased despite the Estate having a monthly income.
37. That on the 10<sup>th</sup> August 2021, a family meeting was held regarding the deceased's property known as Lake-View, where it provided for three administrators of the property and all the family members were to sign the said document; however most of the beneficiaries did not sign the said document making it null and void.
38. That, the deceased properties especially the motor-vehicles registration No. KAR 502C Suzuki Escudo, KAR 233E Toyota Hiace, KBK 228W Nissan Xtrail, has been in possession of some of the beneficiaries who has been intermeddling with the said properties without the express authority from this Honourable Court.
39. That, some beneficiaries have intermeddled with the property known as Lake-View which is a commercial property hindering the estate to earn any income.
40. Following the intermeddling of the said estate has led to a risk of the estate to be disconnected of the electricity since the said beneficiaries has not been paying the utility bill and therefore risking the estate to be sued.
41. Rebecca Wambui Rukeyser has in many occasions written to the bank to complain of the withdrawals done by the signatories on the said bank account with no success.
42. That the signatories are in contempt of the consent which was adopted as the order of this Court and should account for the funds withdrawn from the said bank before this Court.



43. That, Susan Nyambura, Ayub Warui, Eric Warui and Daniel Warui be ordered to refund all and any of the proceeds they have withdrawn from the said bank account and/or misappropriated from the entire estate.
44. That Ayub Warui has been intermeddling with the deceased's property and selling the equipment and livestock, leasing the property and spending the proceeds namely; highland's farm.

### **Analysis & Determination**

45. This Court is of the considered view that the succession of the deceased shall settle an apparent split between the two houses in the estate of the deceased.
46. This Court notes with disdain the manner in which the citation was introduced against Ruth Waruguru when it was apparent to Susan Nyambura, that she lacked capacity and that the family had in fact nominated Rebecca Wambui Rukeyser to jointly take out the letters of Administration.
47. The Citation thus marks a classical weaponization of litigation long before personal representatives were appointed.
48. This Court believes that where a deceased person left no will and an intestate process automatically flows, it is critical and imperative that personal representatives be appointed as soon as the matter is placed before Court. This then can enable the Court to hold any party to account.
49. I am unable to hold anyone liable for intermeddling or failure to abide by the consent and that this does not absolve any party that may have so far committed transgressions on the estate of the deceased.
50. This Court has in the past held that a deceased person intestate estate is by virtue of the *Law of Succession Act* subject to the protection of the Court and that an estate cannot be on auto-pilot such as in this instance where the two houses of the deceased have engaged in side litigation for three years.
51. I am however persuaded to forthwith appoint Rebecca Wambui Rukeyser and Susan Nyambura, as the Personal Representatives and Administrators of the estate late John Warui Mathenge and that a Grant of Letters of Administration intestate shall issue.
52. The palpable split and bad blood in the two houses even where the deceased had undertaken a distribution is saddening to this Court and this Court believes its only distribution of the deceased's estate that shall resolve the same.
53. The Administrators are expected to distribute the estate of the deceased within six months from today without fail.
54. With regards to the squabbles relating monies that remain unaccounted, this Court shall entertain application(s) relating to failure to account after the distribution of the assets.
55. Failure by the Administrators to agree on a common mode of distribution any of the Administrator may file the summons for confirmation with the co-administrator filing an affidavit of protest.
56. With regards to agitation for costs, I am of the view that the costs shall be borne of the estate of the deceased.
57. It is so ordered

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 8TH DAY OF AUGUST, 2024.**

**S. Mohochi**



**JUDGE**

